IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 501 of 2001
with
CRIMINAL APPEAL No. 580 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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HAMIDKHAN A SHAIKH - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

CRIMINAL APPEAL No. 501 of 2001

MR MM TIRMIZI for Appellant(s) : 1,
MR KT DAVE, Additional Public Prosecutor for Opponent(s) : 1,

CRIMINAL APPEAL No. 580 of 2001

MS BANNA DUTTA for Appellant(s) : 1,
MR KT DAVE, Additional Public Prosecutor for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 09/02/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K. A. PUJ)

1. Since both these appeals are arising out of the same judgment and order of the learned Additional Sessions Judge and Special Judge, Bharuch in Special (NDPS) Case No.1 of 1998 dated 15.5.2001 and since both these appeals are heard together, the same are being disposed of by this common judgment.

2. Criminal Appeal No.501 of 2001 is filed by the appellant – original accused No.2, namely, Hamidkhan Abdulhayakhan Shaikh and Criminal

Appeal No.580 of 2001 is filed through jail by the appellant – original accused No.1, namely, Munna Babu Shaikh under Section-374(2) of the Criminal Procedure Code, 1973 (for short 'the Code') against the judgment and order of conviction and sentence dated 15.05.2001 rendered by the learned Additional Sessions Judge and Special Judge, Bharuch, in Special (NDPS) Case No.1 of 1998 convicting both the appellants – original accused Nos.1 and 2 for the offence punishable under Sections-21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and sentencing them to suffer R.I of 10 years with fine of Rs.1 lac (Rupees One Lac Only) and, in default of payment of fine further S.I of 1 year more with a further direction that the period spent by them in jail shall be given set off against the sentence.

3. Briefly stated, the prosecution case as disclosed from the complaint as well as unfolded during trial, is as under :-

4. The facts of the prosecution case are that the officers of A.T.S. Visited Bharuch for their other work. Out of the said officers, a Police Inspector Shri M.T. Rana received an information that two persons have stayed in room no. 12 of Capital Guest House in Bharuch City and they have brown sugar illegally. Out of the two, one's name is Munna Babu Shaikh. On receiving the information, he conveyed the said information to his Deputy Superintendent of Police Shri A.D. Chudasama. All officers went to Bharuch City 'A' Division police station under his instructions. The Police Inspector Shri M.T. Rana conveyed this information in writing and its entry was made in the station diary. Then two panchas, a photographer – weigher etc. were called in the Police Station and explained about the information. A Preliminary panchnama, in this respect, was prepared and started for Capital Guest House. Mubarak Isha Patel was appraised about the information on the reception table of Capital Guest House and was asked to show the room no. 12 in the hotel. As the door of room no. 12 was closed, it was knocked at and the person

opened the door. He informed his name to be Munna Babu Shaikh. The other person was sleeping on a bed and he stated his name to be Hamidkhan Abdulahkhan. The officers gave introduction to them and appraised about the information. It was explained to carry the search on them and in the room no. 12. It was asked as to whether they agreed to get the search carried out in presence of the Police Inspector M.T. Rana and a Gazetted officer K.S. Zala or to be checked in presence of an Executive Magistrate or other Magistrate. If they so desired, readiness to call a Magistrate was shown. But they told to get the search done in presence of the police. There after an order was issued under section 42 of the N.D.P.S. Act and the signatures of the accused and hotel receptionist were taken. The search on person was made one after the other but the nothing was found. No unlawful article was found.

5. Thereafter the search started in the room no. 12. One purple rexine bag was found below the cot. Upon seeing therein after opening it, a black bushirt & pant

and a white pant & printed bushirt were found. A Green coloured jacket with chain was found. Thereafter one sealed plastic bag was found therein. An almond coloured powder was there in the said bag. On asking about the packet, Munna Babu Shaikh informed it to be the brown sugar. It was stated that the purple bag and the brown sugar were of Hamidkhan Abdulahkhan Shaikh. A photograph of the said packet was taken by the photographer. The P.S.I. Shri N.G. Dodia immediately phoned to the FSL, Surat and called for an expert team for examination on the spot. Then the plastic bag was opened and the powder was smelt to the panchas. The plastic bag was weighed by the weigher. The photographer was also instructed to take photograph of the weighing process. Total weight of the plastic bag with the packet was 1 kg. 841 gram and 500 mg. Thereafter five-five gram brown sugar were taken out in two different small plastic boxes. In the meantime Scientific officers Shri B.D. Davada and Shri G.G. Shaikh came from FSL, Surat. Then the chemical analysis thereof was made and it was found to be

psychotropic substance 'Opium Derivatives'. Thereafter the packet , duly weighed, was closed with a stapler pin and placed in a white clothe paper and sewed with string. Both the small boxes were covered with clothe paper and sewed. The packet was given Ex. A and one of the sample boxes was given Ex. A/1 for laboratory test and the other box was given Ex. A/2 as a control sample. The sleeps bearing the signatures of the panchas, original complainant, P.I. Shri D.A. Patel and P.I. Shri M.T. Rana, Shri K.S. Zala were placed and tied with a string and affixed the waxing seal of 'Police Inspector, Bharuch City'. Accordingly the purple coloured bag was also sealed and seized for further investigation. The register of the hotel Capital Guest House, for a period from 28th July,96 till the date of search i.e. dt.4/10/97, was seized. The international market value of the said brown sugar was calculated to be Rs. 1,80,41,500 /-. Thus these persons viz. Munna Babu Shaikh and Hamidkhan Abdulahkhan Shaikh had, by consent of each other, kept 1 kg 841 gram 500 mg brown sugar in a bag without pass –

permit and it was found in their possession from the room no. 12 of the Capital Guest House. The complainant A.T.S. Shri D.A. Patel lodged a complaint against them for the offence under section 21 and 29 of the N.D.P.S. Act 1985.

6. After registering an offence from this complaint, the investigation for the offence was assigned to P.S.I. Shri Dodia. The statement of concerned witnesses were recorded. The Muddamal sample was sent to FSL Surat. During the investigation of the accused, it was known that the brown sugar was supplied by the persons of an accused Sarfaraj Ahmed Zahur Ahmed Chhipa. So he was also arrested during the investigation. The report of FSL, Surat was received and according to the report, the substances morphine, heroin, narcotin, and methaqualone etc. were found. Hence charge sheet was filed against the accused for the offence punishable under section 21 and 29 of the N.D.P.S. Act.

7.The learned Additional Sessions Judge and Special

Judge, Bharuch, to whom the case was made over for trial, framed charge against the appellants – original accused Nos.1 and 2 and other accused No.3 for commission of the offence punishable under Sections-21 and 29 of the NDPS Act which was read over and explained to them. As the accused pleaded not guilty to the charge and claimed to be tried, they were put to trial and tried in Special (NDPS) Case No.1 of 1998.

8. To prove the culpability of the accused the prosecution has examined and relied upon the evidence of 16 witnesses, details of which are given in para-4 of the impugned judgment and order and the same are as under:-

Sr.No.	Particulars	Exh.No.	Page No.
1	P.W No.1 – Amul Parsuram Bhamwala.	19	102-106
2	P.W No.2 – Khuswadan Tribhovandas.	26	115-118
3	P.W No.3 – Narsinh Magan Parmar.	28	120-121
4	P.W No.4 – Bazi Amarsing Papesing.	31	123-124
5	P.W No.5 – Mubarak Musa Nanawala.	33	126-128
6	P.W No.6 – Karsan Ratanji.	36	130

Sr.No.	Particulars	Exh.No.	Page No.
7	P.W No.7 – Rameshchandra Himmatlal.	38	132-137
8	P.W No.8 – Chetanbhai Dalpatbhai.	39	138-139
9	P.W No.9 – Harshad Magan Suthar.	42	141-142
10	P.W. No.10 – Pandurang Omkar Shastri.	43	143-144
11	P.W. No.11 – H.C.Raman Mathur	44	145-146
12	P.W. No.12 – Khumansinh Chatru Padhiyar.	46	
13	P.W. No.13 – Madansinh Takhatsinh Rana.	50	153-159
14	P.W. No.14 – Daud Adam Patel.	54	163-169
15	P.W. No.15 – Kiritsinh Surubha Zala.	57	175-181
16	P.W. No.16 – Naransinh Ganpatsinh Dodia.	70	197-206

9.To prove the case against the appellants – original accused Nos.1 and 2, the prosecution has also produced and relied upon number of documents, details of which are in para-4 of the impugned judgment and order, which are as under :-

Sr.No.	Particulars	Exh.No.	Page No.
1	Charge-sheet.	1	32-34
2	Charge.	6	35-36

Sr.No.	Particulars	Exh.No.	Page No.
3	Slips of pancha's signatures.	20 to 23	107
4	Panchnama.	24	108-113
5	Resolution as required under Section-42 of the NDPS Act in respect of search at Capital Guest House.	25	114
6	Certificate of Pushpam Jewellers.	32	125
7	Xerox copy of Guest House Register.	34	126
8	Receipt of FSL.	45	147
9	Receipt of FSL.	47	150
10	Panchnama.	48	151-152
11	Entry of Station Diary.	58	182
12	Report of D.S.P.	59	183
13	Entry No.10 and 15 of Station Diary.	60 & 61	184-185
14	Report of FSL.	87 & 88	228-230

10. After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge and Special Judge, Bharuch, explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statement under Section-313 of the Code. In their further statement, the accused

have denied the case of the prosecution by reiterating that they have been falsely implicated.

11. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Additional Sessions Judge and Special Judge, Bharuch, has held that contraband article brown-sugar was recovered from the appellants – original accused Nos.1 and 2 and the prosecution has been able to establish that the complicity of accused for commission of the offences with which they were charged, has been proved beyond reasonable doubt, and therefore, he recorded the order of conviction and sentence against them to which reference is made in earlier paragraph of this judgment, giving rise to the instant appeals at the behest of the appellants-original accused Nos.1 and 2.

12. Learned Additional Sessions Judge and Special Judge, Bharuch has however acquitted the original accused No.3 from the charge of offence levelled against him.

13. Mr.M.M.Tirmizi and Ms. Banna Dutta, learned advocates appearing for the appellants – original accused Nos.2 and 1 respectively have taken us through the oral as well as documentary evidence which are on record and also assailed the judgment and order of the learned Additional Sessions Judge and Special Judge, Bharuch dated 15.05.2001 rendered in Special (NDPS) Case No.1 of 1998. Mr.Tirmizi has further submitted that the learned Additional Sessions Judge and Special Judge, Bharuch has erred in convicting the appellants – original accused No.2 though there was no cogent or adequate evidence showing his guilt in the matter. He has further submitted that the learned Additional Sessions Judge and Special Judge, Bharuch has failed to appreciate that the appellant – original accused No.2 is innocent and has not committed the alleged offence. He has further submitted that the evidence pressed into service by the prosecution is untrustworthy, unreliable and can never form basis of conviction.

14. Mr.Tirmizi has further submitted that it is alleged in the complaint that the secret information was received by the complainant that the appellants – original accused Nos.1 and 2 are staying at the room No.12 of the Capital Guest House, Bharuch and that they were having brown-sugar in their possession. On receipt of this information, the complainant should have reduced in writing and should have informed his immediately superior about the information so received. The complainant has not complied with the mandatory provisions of the Act and, therefore, the appellants – original accused Nos.1 and 2 ought to have been acquitted from the charge of offence levelled against them. Mr.Tirmizi has further submitted that while searching the person of the appellants - accused Nos.1 and 2, the complainant had not informed the appellants – original accused Nos.1 and 2 of their right guaranteed under the Act of being searched before the Magistrate or any other gazetted officer. He has, therefore, submitted that the whole search and seizure procedure is vitiated for

non-compliance of the provisions contained in Section-50 of the NDPS Act. Mr.Tirmizi has further submitted that the muddamal articles were alleged to have been found from below the coat in the said room, which obviously was not of the ownership of the appellants – original accused Nos.1 and 2. The prosecution failed to prove that the muddamal article was in the conscious possession of the appellants – original accused Nos.1 and 2. He has, therefore, submitted that the impugned judgment and order is required to be quashed and set aside.

15. Mr.Tirmizi has further submitted that the sampling and seizure of the alleged muddamal article was not in accordance with the standard procedure and, therefore, the appellants – original accused Nos.1 and 2 ought not to have been convicted. He has further submitted that the prosecution witness No.11 – Rameshbhai Mathurbhai, who has been examined at Ex.44, has in no uncertain terms admitted that the muddamal sample which was sent for analysis was deposited late by him at the FSL, Surat. The said

witness has simply stated that as the traffic was jammed he reached late. The samples were in custody of the said witness for the whole of night and, therefore, the possibility of tampering with the samples cannot be ruled out. He has, therefore, submitted that the impugned judgment and order is required to be quashed and set aside. Mr.Tirmizi has further submitted that the report of the FSL is very cryptic. It is not borne out from the report as to what procedure was followed and whether the tests applied are reliable and valid. He has therefore submitted that no reliance should have been placed on the said report.

16. In view of the above factual background and for non-compliance of the statutory provisions and keeping in mind the judicial pronouncements on the issues raised, Mr. Tirmizi has strongly urged that no other finding except acquittal of the appellants – original accused Nos.2 and 1 from the charges levelled against them would meet with the ends of justice.

17. Mr. K. T. Dave, learned Additional Public Prosecutor, on the other hand has supported the order and judgment of the learned Additional Sessions Judge and Special Judge, Bharuch and submitted that there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the statutory provisions were violated. So far as sealing procedure is concerned, Mr. Dave has relied on the decision of the Hon'ble Supreme Court in the case of **Babubhai Odhavji Patel and Others V/s. State of Gujarat, 2005 (8) SCC 725** and submitted that there was no violation of the sealing procedure and it was properly followed by the raiding party and/or Investigating Agency and the conviction of the appellants – original accused Nos.1 and 2 cannot be disturbed on this ground.

18. Mr. Dave has further submitted that the prosecution has clearly established beyond reasonable doubt the

charges against the appellants – original accused Nos.1 and 2. He has further submitted that the prosecution case is not merely based on the testimonies of the members of the raiding party consisting of the Police Officers. There is independent corroboration to support the prosecution version. An independent corroboration and independent support makes the prosecution version more acceptable in light of the settled legal position. He has further submitted that the documentary evidence on the record of the proceedings clearly establish the involvement, presence and role of the appellants – original accused Nos.1 and 2 in the offences charged with. He has further submitted that all the mandatory provisions contained in the Act have been fully complied with by the members of the raiding party and, therefore, the prosecution having clearly established beyond reasonable doubt the guilt of the appellants – original accused Nos.1 and 2, the conviction order passed by the learned Additional Sessions Judge and Special Judge, Bharuch is required to be upheld.

19. We have considered the submissions advanced by Mr.M.M.Tirmizi and Ms.Banna Dutta, learned advocates appearing for the appellants - original accused Nos.2 and 1 and Mr. K.T.Dave, learned Additional Public Prosecutor, appearing for the State of Gujarat at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial collections. We have applied our mind to the impugned judgment and order passed by the learned Additional Sessions Judge and Special Judge, Bharuch convicting the appellants accused Nos.1 and 2 and sentencing them for R.I of 10 years and fine of Rs.1 lac each and in default thereof, to undergo further R.I of 1 year more for each one of them.

20. In order to find out whether the prosecution has established the charge against the appellants –

original accused Nos.1 and 2 beyond reasonable doubt and whether the learned Additional Sessions Judge and Special Judge, Bharuch has recorded a just and correct conclusion holding the appellants – original accused Nos.1 and 2 guilty, we may first advert to the oral testimony of the prosecution witnesses.

P.W. No.1 – Amul Parshuram is a panch witness. He has not supported the case of the prosecution and yet he was not declared hostile initially. He was recalled and then he was declared hostile and contradictions between his police statement and deposition before the Court were proved.

Panchnama Ex.24 is drawn at the scene of the offence. It indicates that the necessary entry was made in police diary. Proper understanding was given to the panchas and all police personnels who were present at the time of raid. All of them were entered in room No.12 of Capital Guest House. Accused were informed about their right to be searched by Gazetted Officer or Magistrate under Section-50 of the Act. Room was searched. Bag was

found wherein contraband articles was detected. Weighing of contraband article, drawing of sample, sealing etc, were narrated in the panchnama. No infirmity was found in sealing procedure.

P.W. No.2 – Khushvadan Tribhovandas Rana is a panch witness. He turned hostile.

P.W. No.3 – Narshinbhai Maganbhai Parmar is a photographer. He confirmed his visit alongwith raiding party on 6.10.1997 and further confirmed about his taking photographs of contraband articles as well as appellants – accused.

P.W. No.4 – Amarsinh Meghsinh Rathod is serving in Pushpam Jwellers. He has confirmed his visit to Capital Guest House and weighing the contraband articles. A certificate to this effect was issued and produced at Ex.32.

P.W. No.5 – Mubarkbhai Musabhai is working as receptionist in Capital Guest House. He confirmed the stay of appellants – accused Nos.1 and 2 at Capital Guest House. He produced the relevant extract from the Hotel Register at Ex.35.

P.W. No.6 – Karsanbhai Ratanjibhai is a Police

Constable working in Bharuch City 'A' Division Police Station. He confirmed that on 6.10.1997 P.I. Shri Zala has handed over to him sealed cover to be delivered to D.S.P. Bharuch. He produced the receipt at Ex.37 showing the delivery of the said sealed cover.

P.W. No.7 – Rameshchandra Himatlal is a Police Constable in Bharuch City 'A' Division Police Station. He was sent to call for two independent witnesses. He deposed in great detail the entire procedure followed at Capital Guest House in respect of seizure and sealing of muddamal articles in presence of panchas and other members of the raiding party.

P.W. No.9 – Harshankumar Maganlal Suthar is Police Sub Inspector in Bharuch City 'A' Division Police Station. He registered an offence under Section-21 and 29 of the NDPS Act being CR No.II-189 of 1997 on the basis of written report submitted by P.I. Shri Zala, A.T.S. Ahmedabad. P.I – Shri D.A.Patel, panchnama of the place of offence, sealed muddamal articles and production of appellants – accused.

P.W. No.10 – Pandurang Omkar Shastri is a crime writer. He confirmed that he has taken the custody

of muddamal article in police station.

P.W. No.11 – Ramanbhai Mathurbhai is a Head Constable in Bharuch City 'A' Division Police Station. He delivered the sample for chemical analysis to FSL, Surat. He produced the Ravangi Note as well as receipt.

P.W. No.13 – Madansinh Takhtsinh Rana is P.I in A.T.S. Ahmedabad. He was one of the members of the raiding party. He narrated inter alia the sealing procedure in great detail. He deposed that main packet was packed with stapler. A white paper was wrapped and tied down with string. It was thereafter stitched with needle and thread and after putting slip duly signed by panchas and this P.I, a seal of Bharuch P.S.I was affixed. The same procedure of sealing was followed in respect of different samples.

p.w. No.14 – Mr.D.A.Patel – P.I, A.T.S. Ahmedabad and P.W. No.15 – Kiritsinh Gurubha Zala P.I. In Bharuch City 'A' Division Police Station have also deposed in the same way as the prosecution case was.

21. From the evidence of the above mentioned witnesses examined by the prosecution, it is seen that they have testified before the Court as to what role they played in the raid. They also testified with regard to compliance of Sections 42, 50, 55 and 57 of the NDPS Act.

22. So far as the statutory provisions contained under Section 42 (1) of the NDPS Act is concerned, it deals with power of entry, search, seizure and arrest without warrant or authorization in a building, conveyance or enclosed place, between sunrise and sunset. So far as Section 42 (2) of the NDPS Act is concerned, it provides that where an officer takes down any information in writing under sub-section (1) of section 42 of the NDPS Act or records grounds for his belief under the provisos thereto, he shall forthwith send a copy thereof to his immediate official superior. The secret

information was reduced into writing and it was immediately communicated to the official superior as can be reflected from the documentary evidence on record. Therefore, the compliance of the mandatory provisions of section 42 of the NDPS Act has been done by the raiding party.

23. So far as the compliance of the mandatory provisions of Section 50 of the NDPS Act is concerned, the evidence is consistent. At the time of visit to the Guest House and raid, the complainant had informed the accused that if they so desired, they could be searched in presence of a gazetted officer or a magistrate or if they desired that they may be searched by him, then he will search them and the option was left to the accused and the accused preferred the second option and volunteered to be searched by him. Therefore, the complainant, in presence of the panchas and other police personnels who were members

of the raiding party, searched the person of the accused and during the search of Guest House Room No.12 he found contraband article.

24. So far as the journey of the muddamal from the stage of interception of the accused, search of the person of the accused and seizure and sealing of contraband article till it reached FSL Surat has also been duly proved and all the witnesses, in this regard, are consistent. As per the said evidence, the muddamal was not tampered with at any stage and it reached FSL Surat intact in sealed condition. The procedure for sealing was done as per the practice adopted by the police in NDPS cases. FSL report clearly shows that the muddamal was sealed and in intact condition. It is also clear from the FSL report that it was received by FSL intact in sealed condition and on analysis of the muddamal it was found to be brown-sugar. Therefore, during journey of the muddamal from seizure

and sealing till it reached FSL Surat for analysis there was no question of tampering with the said muddamal.

25. Independently this court has also perused the documents on record and from the perusal of the same it is clear that the raiding party and/or Investigating Officer, has strictly followed the mandatory and statutory provisions contained under the NDPS Act and no discrepancy could be noticed by this court on the part of raiding party and/or Investigating Officer with regard to compliance of the provisions of NDPS Act.

26. On overall view of the matter, according to this Court, the mandatory and statutory provisions contained under Sections 42 (1), 42 (2), 50, 55 and 57 of the NDPS Act have been adhered to and complied with by raiding party and/or Investigating Officer, and it is duly proved by the evidence of the

prosecution witnesses. Raiding party and/or Investigating Officer, had taken utmost care and caution while seizing and sealing the said contraband article. The apprehension of tampering with the muddamal can be ruled out as from the stage of recovery of the muddamal till its reaching the FSL, proper care and caution was taken by the police personnel. It is on the contrary clearly proved that it was in the safe hands of police personnel and it reached at FSL intact in sealed condition for chemical analysis.

27. In view of the aforesaid evidence, there is no manner or doubt that when the appellants - accused Nos.1 and 2 were intercepted, apprehended and searched, they were found in possession of contraband article brown-sugar. Necessary formalities of search and seizure were complied with in presence of panchas and the statutory requirements and formalities contained under

the NDPS Act were followed and the sample was sent to FSL Surat for analysis after following the procedures under the NDPS Act.

28. On close scrutiny of the evidence on record, we find no infirmities in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the trial court. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence passed by the trial court, as according to us, no other conclusion is possible except the one reached by the trial court in the facts and circumstances of the case.

29. In view of above, none of the arguments canvassed by Mr.Tirmizi and Ms.Banna Dutta, convinced us to take any different view. The evidence has been carefully analyzed and fully appreciated in the closely reasoned

judgment with which we fully concur. We do not think it right to invest more time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of brevity.

30. In aforesaid view of the matter, there is no reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. The sentence awarded to the accused is minimum and has to be maintained.

31. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the trial court and as the appeals lack merit, they deserve to be dismissed. However, looking to the facts and circumstances of the case, we reduce default sentence imposed by the trial Court for 1

year to 6 months in respect of each of these two appellants – original accused Nos.1 and 2.

32. For the foregoing reasons, and subject to the above modification in default sentence both the appeals fail and accordingly they are dismissed.

[A. M. KAPADIA, J.] [K.A. PUJ, J.]

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